



Issued by the Working Group on Effective Treaty Implementation

07 April 2020

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Dear all,

The Working Group on Effective Treaty Implementation (WGETI) held its first meeting in the context of the preparatory process for CSP6 on 04-05 February 2020. This meeting focused its attention on three priority issues, namely implementation of ATT Articles 6 & 7, Article 9 as well Article 11. Discussions on these items were led by the three appointed facilitators.

Discussions at the February meetings were productive and a number of elements requiring further discussions or elaboration was identified. The three facilitators played an important role in steering the work of the sub-working groups to such ends.

The second meeting of the WGETI was scheduled to take place from 14-15 April 2020, with the intention of building on and taking forward the discussions of the February meeting. As announced by the President of CSP6 in his letter of 18 March 2020, the ATT meetings scheduled to take place in April 2020 were cancelled due to the COVID-19 outbreak.

As was also announced by the CSP6 President in his letter of 01 April 2020, the President, in consultation with the ATT office holders and the ATT Secretariat, has prepared a plan that will allow our work to continue remotely in the intersessional period to ensure necessary decisions can be taken by CSP6 guiding the work of the next CSP cycle. That plan involves the ATT office bearers consulting with ATT stakeholders remotely on the documents to be submitted to CSP6, and finalising the documents for timely submission to CSP6.

The WGETI documents that were identified for circulation to ATT stakeholders for consultation remotely (on-line) during the intersessional period are included in the table below.

#	Document to be submitted
	<b><i>Working Group on Effective Treaty Implementation (WGETI)</i></b>
	<b>Articles 6 &amp; 7</b>
1.	Revised draft multi-year work plan
2.	Revised draft elements of a Voluntary Guide to implementing Article 6&7
	<b>Article 9</b>
3.	Draft multi-year work plan
	<b>Article 11</b>
4.	Revised multi-year work plan

In accordance with the plan announced by the President in his letter of 01 April 2020, the facilitators of each WGETI sub-working group have prepared the documents listed above that you will find herewith as Annexes A, B, C and D. Background information regarding each of the documents is provided in the following section.

### ***Articles 6&7 (Prohibitions & Export and Export Assessment)***

During its first meeting in February 2020, the WGETI sub-working group on Articles 6&7 considered three documents prepared by the facilitator, Ambassador Ignacio SÁNCHEZ DE LERÍN of Spain: a) A draft multi-year work plan pertaining to the work of the sub-working group on Articles 6 and 7; b) A methodology template for unpacking key concepts; and c) A draft outline of a possible voluntary guide to be developed by the sub-working group during the course of its work, titled: 'Elements of a voluntary guide to implementing Articles 6 & 7 of the Arms Trade Treaty'.

The facilitator of the sub-working group on Article 6&7 has prepared updated versions of the following documents, incorporating comments and suggestions received during the February meeting:

1. Revised draft multi-year work plan
2. Revised draft elements of a Voluntary Guide to implementing Articles 6&7

The facilitator looks forward to receiving any written comments and suggestions regarding the revised draft multi-year work plan and the revised draft elements of a Voluntary Guide to implementing Articles 6&7, so final versions may be submitted to CSP6 for consideration and endorsement

With respect to the methodology template for unpacking key concepts, the facilitator is in the process of collating inputs received from States Parties and will report back to the group on how many States Parties provided responses through the template, and will present other concepts that States may have requested to be included in the compilation exercise, during the first meeting of the group in the CSP7 cycle in 2021.

### ***Article 9 (Transit or trans-shipment)***

During its first meeting in February 2020, the WGETI sub-working group on Article 9 held a general discussion on the scope and nature of the transit and trans-shipment provisions in Article 9 of the Treaty. Following the preliminary discussions, the facilitator of the sub-working group on Article 9, Mr. Rob WENSLEY of South Africa, has prepared a draft multi-year work plan to guide the work of the group in the coming CSP cycles. The draft multi-year plan is included in Annex C for consideration by ATT stakeholders.

In reviewing the draft proposed multi-year plan, stakeholders are invited to consider, amongst others, the following questions:

- a. Has sufficient time has been allocated to each topic?
- b. Have any key concepts that should be 'unpacked' been omitted?
- c. Has any consideration been omitted?

The facilitator looks forward to receiving any written comments and suggestions regarding the draft multi-year work plan, so a final version may be submitted to CSP6 for consideration and endorsement

### ***Article 11 (Diversion)***

During its previous meetings, the WGETI sub-working group on Article 11 developed a multi-year work plan as a living document to guide continued work in this area. This formed Annex C to the WGETI Chair's Draft Report to CSP5, contained in document ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep, was welcomed by CSP5. The multi-year work plan is focused on three parts:

1. Before the transfer
2. During the transfer
3. At or after importation/ Post delivery

In accordance with the multi-year work plan, the second meeting of WGETI sub-working group on Article 11 due to be held in April 2020, was intended to focus on transfer chain stage 1 – Before the transfer - and was supposed to continue the discussion on assessing the risk of diversion.

In light of the cancellation of the second meeting due to be held in April 2020, the facilitator of the sub-working Group on Article 11 (Diversion), Ms. Stela PETROVIĆ of Serbia, has revised the multi-year plan to postpone the concluding discussions on assessing the risk of diversion and consideration of the facilitator's draft paper on the process for assessing such risks, to coincide with the 1<sup>st</sup> CSP7 Informal Preparatory Meeting, which will take place in 2021. All the sessions contemplated in the multi-year work plan subsequent to the April 2020 meeting have adjusted accordingly. The revised multi-year plan is included in Annex D.

One of the consequences of the proposed revisions to the multi-year plan necessitated by the COVID-19 outbreak, is that the work of the sub-working group on Article 11 will conclude at the end of the 1<sup>st</sup> CSP8 Informal Preparatory Meeting (i.e. mid-way through the CSP8 cycle). Consideration therefore needs to be given to whether: a) an additional thematic session should be added to the multi-year work plan of the sub-working group on Article 11 (so the current work plan finishes at the end of the CSP8 cycle rather than half way through it); or b) a new sub-working group on a separate Article of the Treaty should commence its work in the middle of the CSP8 cycle, following the conclusion of the work of the sub-working group on Article 11.

This decision does not need to be made by CSP6, but it cannot be postponed beyond CSP7. Accordingly, the facilitator will include this on the agenda of the first meeting of the sub-working group to be held in 2021 during the CSP7 cycle.

In the meantime, the facilitator looks forward to receiving any written comments and suggestions regarding the revised multi-year work plan, so a final version may be submitted to CSP6 for consideration and endorsement.

### ***Next steps***

In accordance with the announcement of the President on 01 April 2020, ATT stakeholders are kindly requested to submit their comments and inputs to the WGETI documents attached in Annexes A-D in writing to the ATT Secretariat via email at [info@thearmstradetreaty.org](mailto:info@thearmstradetreaty.org) or via the information exchange platform on the restricted area of the ATT website (for States Parties and Signatory States only), on or by **21 May 2021**.

I look forward to working with all of you in finalizing the WGETI documents to be submitted to CSP6 and appreciate your continued commitment to the work of the WGETI in these uncertain times.

Yours sincerely,

Ambassador Jang-keun LEE  
Deputy Permanent Representative Permanent Mission of the Republic of Korea  
**Chair of the ATT Working Group on Effective Treaty Implementation**

ANNEX A

REVISED DRAFT MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLES 6&7 (PROHIBITIONS & EXPORT AND EXPORT ASSESSMENT)

<b>1<sup>st</sup> CSP6 Preparatory Meeting, 04 February 2020</b>	
<b>10.00-11.00</b>	<p><b>Topic 1: Draft Multi-year Work Plan</b></p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>In reviewing the draft proposed multi-year plan, participants are invited to consider, amongst others, the following questions:</i></p> <ol style="list-style-type: none"> <li>a. <i>Has sufficient time has been allocated to each topic?</i></li> <li>b. <i>Have any key concepts that should be 'unpacked' been omitted?</i></li> <li>c. <i>Has any consideration been omitted?</i></li> </ol>
<b>11.00-12.00</b>	<p><b>Topic 2: Methodology for unpacking concepts</b></p> <p>Introduction by facilitator</p> <p>Explanation of the template and methodology</p> <p>Open discussion based on other concepts that may require better understanding.</p> <p><i>States should turn back the fulfilled templates before 15 April 2020. The facilitator would then prepare a concept paper compiling common practice in this area that could serve as guidance to other States Parties for discussion at CSP7 First Preparatory Meeting.</i></p>
<b>12.00-13.00</b>	<p><b>Topic 3: Draft Elements of a Voluntary [Training] Guide</b></p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>During this session, the Facilitator will present a preliminary outline of the Voluntary Guide that will be developed during the course of the multi-year workplan as each topic is discussed. Participants will have the opportunity to comment on the draft outline.</i></p>

## 2<sup>nd</sup> CSP6 Preparatory Meeting, 14 April 2020

### **Meeting cancelled due to the COVID-19 crisis.**

*The Facilitator will circulate a revised draft multi-year plan, incorporating the discussions on the initial multi-year plan discussed during the 1<sup>st</sup> CSP6 Preparatory Meeting. Participants will be invited to provide their feedback and inputs on the revised multi-year plan in writing via email to the ATT Secretariat by 21 May 2020, with a view to the Facilitator being in a position to present a final version to CSP6 for consideration and possible adoption/endorsement*

## 1<sup>st</sup> CSP7 Preparatory Meeting, (date TBC)

1h

### **Topic 4: Unpacking key concepts**

*The facilitator will report back to the group on how many States Parties have provided responses through the template, and will present other concepts that States may have requested to be included in the compilation exercise.*

*In addition, there will be expert kick-off presentations on what constitutes ‘a serious violation of international humanitarian law’ and ‘a serious violation of international human rights law’.*

2h

### **Topic 5: Voluntary Guide – Chapter 1 (Key concepts)**

*Open discussion on Chapter 1 of the Voluntary Guide to Implementing Articles 6&7 (Key concepts). Participants will have the opportunity to review and comment on the proposed structure.*

## 2<sup>nd</sup> CSP7 Preparatory Meeting, (date TBC)

30 minutes

### **Topic 6: Unpacking key concepts**

*The facilitator will present the concept paper compiling common practice in this area that could serve as guidance to other States Parties for open discussion and consideration for endorsement by CSP7.*

1h 30 mins

### **Topic 7: Article 7(2) - Mitigation measures**

*This discussion will explore the obligation in Article 7(2) for exporting States Parties to ‘consider whether there are measures that could be undertaken to mitigate risks identified’ when conducting assessments in accordance with Articles 7.1(a) and (b) as well as Article 7.4. The discussion will focus on State practice with respect to the following aspects:*

- *What ‘confidence-building measures’ have States undertaken to mitigate risks?*

	<ul style="list-style-type: none"> <li>- What 'jointly developed and agreed programmes' have been developed or adopted by export and importing States to mitigate risks? <ul style="list-style-type: none"> <li>o What are the practicalities of developing and implementing such programmes?</li> <li>o What are the characteristics/elements or prerequisites for successful programmes (i.e. those that have mitigated identified risks)?</li> </ul> </li> <li>- How do States determine when/that an identified risk has been adequately mitigated?</li> </ul>
<b>1 hour</b>	<p><b>Topic 8: Voluntary Guide –Chapter 1</b></p> <p><i>The Facilitator will present the revised draft of Chapter 1 of the Voluntary Guide to Implementing Articles 6&amp;7 (Key concepts), derived from the discussions held during the 2nd CSP6 Preparatory Meeting held on 14 April 2020 and the 1st CSP7 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>
<b>1<sup>st</sup> CSP8 Preparatory Meeting, (date TBC)</b>	
<b>1h</b>	<p><b>Topic 9: Voluntary Guide –Chapter 3 (Article 7 (Export and Export Assessment))</b></p> <p><i>The Facilitator will also present the preliminary draft of Chapter 3 (Article 7 (Export and Export Assessment), derived from national presentations and discussions held during the CSP4 and CSP5 cycles, as well as the 1st CSP7 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>
<b>2h</b>	<p><b>Topic 10: Relationship between Article 6 and other Articles</b></p> <p><i>This discussion will explore the question: What are the implications of the phrase 'shall not authorize any <b>transfer</b>' in Article 6? Participants will discuss the relationship between Article 6 and other Articles in the Treaty, including:</i></p> <ul style="list-style-type: none"> <li>- <i>What is the relationship between Article 6 and Article 7 (Export and Export Assessment), since the term 'transfer' includes 'export' under Article 2(2)?</i></li> <li>- <i>What is the relationship between Article 6 and Article 8 (Import), since the term 'transfer' includes 'import' under Article 2(2)?</i></li> <li>- <i>What is the relationship between Article 6 and Article 9 (Transit and Trans-shipment), since the term 'transfer' includes 'transit' and 'trans-shipment' under Article 2(2)?</i></li> <li>- <i>What is the relationship between Article 6 and Article 10 (Brokering), since the term 'transfer' includes 'brokering' under Article 2(2)</i></li> </ul>

## 2<sup>nd</sup> CSP8 Preparatory Meeting, (date TBC)

3 hours

### Topic 11: Scope of Article 6

*This discussion will explore the obligations in Article 6, including the following issues:*

Article 6: What does 'shall not authorize any transfer' entail in the context of Article 6?

Article 6(1): What 'obligations under measures adopted by the United Nations Security Council' are covered under Article 6(1)?

Article 6(2): What 'international obligations under international agreements' are '**relevant**' under Article 6(2)?

#### Article 6(3)

- What constitutes '**knowledge** at the time of authorization' under Article 6(3)?
- How is 'genocide' defined under international law?
- How are 'crimes against humanity' defined under international law?
- What are grave breaches of the Geneva Conventions of 1949?
- What are 'attacks against civilian objects or civilians protected as such'?
- What other 'war crimes' may be included?

*In addition, there will be expert kick-off presentation on how the term 'knowledge' is interpreted in international law.*

## 1<sup>st</sup> CSP9 Preparatory Meeting, (date TBC)

1 hour

### Topic 12: Scope of Article 6

*This discussion will explore the obligations in Article 6, including the following issues:*

Article 6: What does 'shall not authorize any transfer' entail in the context of Article 6?

Article 6(1): What 'obligations under measures adopted by the United Nations Security Council' are covered under Article 6(1)?

Article 6(2): What 'international obligations under international agreements' are '**relevant**' under Article 6(2)?

#### Article 6(3)

- What constitutes '**knowledge** at the time of authorization' under Article 6(3)?
- How is 'genocide' defined under international law?
- How are 'crimes against humanity' defined under international law?

	<ul style="list-style-type: none"> <li>- <i>What are grave breaches of the Geneva Conventions of 1949?</i></li> <li>- <i>What are 'attacks against civilian objects or civilians protected as such'?</i></li> <li>- <i>What other 'war crimes' may be included?</i></li> </ul>
<b>1 hour 30 mins</b>	<p><b>Topic 13: Voluntary Guide – Chapter 2 (Article 6 (Prohibitions))</b></p> <p><i>The Facilitator will present the preliminary draft of Chapter 2 of the Voluntary Guide to Implementing Articles 6&amp;7 (Article 6 (Prohibitions)), derived from the discussions held during the 1st CSP8 Preparatory Meeting. Participants will have the opportunity to review and comment on the draft chapter.</i></p>
<b>30 minutes</b>	<p><b>Topic 14: Voluntary Guide – Conclusion</b></p> <p><i>The Facilitator will present the final draft of the Voluntary Guide to Implementing Articles 6&amp;7 in order to consider the endorsement by CSP8.</i></p>
<b>2<sup>nd</sup> CSP9 Preparatory Meeting, (date TBC)</b>	
<b>3 hours</b>	<p><i>[The topic(s) for discussion is to be determined according to previous discussions and may include continuation of themes addressed in previous sessions that require more time, or new themes or elements of Articles 6&amp;7 that have arisen during previous sessions, but have not yet been addressed.]</i></p>

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## ANNEX B

### REVISED DRAFT ELEMENTS OF A VOLUNTARY GUIDE TO IMPLEMENTING ARTICLES 6 & 7 OF THE ARMS TRADE TREATY

#### Introduction

1. Key concepts
2. Article 6 (Prohibitions)
  - a. What does '*shall not authorize any transfer*' entail in the context of Article 6?
  - b. Who is responsible for determining whether a transfer should not be authorized in accordance with Article 6?
  - c. Article 6(1)
    - i. Obligations under measures adopted by the United Nations Security Council
  - d. Article 6(2)
    - i. Relevant international obligations under international agreements
  - e. Article 6(3)
    - i. What constitutes 'knowledge' at the time of authorization?
    - ii. How is 'genocide' defined under international law?
    - iii. How are 'crimes against humanity' defined under international law?
    - iv. What are grave breaches of the Geneva Conventions of 1949?
    - v. What are 'attacks against civilian objects or civilians protected as such'?
    - vi. What other 'war crimes' may be included?
3. Article 7 (Export and Export Assessment)
  - a. What is the obligation in Article 7?
  - b. Conducting risk assessments under Article 7
    - i. When must a State Party conduct a risk assessment?
    - ii. Who conducts risk assessments?
    - iii. What criteria must be applied?
      1. Peace and security
      2. Serious violations of international humanitarian law
      3. Serious violations of international human rights law
      4. Offences under international conventions or protocols relating to terrorism
      5. Offences under international conventions or protocols relating to transnational organised crime
      6. Serious acts of gender-based violence or serious acts of violence against women and children

- c. Mitigation measures
- d. Overriding risk
  - i. How do States Parties approach the interpretation of the term ‘overriding risk’? [*this section will summarize the findings of the inputs to the methodology template*]
  - ii. What is the threshold for determining whether there is an ‘overriding risk’ of any of the negative consequences in Article 7(1)?
- e. Information sharing
  - i. [How can importing and transit and trans-shipment States Parties request information regarding an export authorization?]
  - ii. What are the options for sharing information regarding export authorizations in the context of Article 7(6)?
- f. Reassessing export authorizations
- g. [Other]

Conclusion

Annex. List of possible reference documents to be considered by States Parties in conducting a risk assessment under Article 7

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## ANNEX C

### DRAFT MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLE 9 (TRANSIT OR TRANS-SHIPMENT)

21 April – 21 May 2020 (CSP6 intersessional period)	
<b>Online consultations</b>	<p><b>Draft Multi-year Work Plan</b></p> <p><i>The Facilitator, with the support of the ATT Secretariat, will circulate a draft multi-year work plan for the Sub-working group on Article 9 (Transit or trans-shipment) to ATT stakeholders on 21 April. ATT stakeholders will be invited to review the draft multi-year plan and provide written comments to the Facilitator via the ATT Secretariat by 21 May 2020.</i></p> <p><i>In reviewing the draft proposed multi-year plan, participants are invited to consider, amongst others, the following questions:</i></p> <ol style="list-style-type: none"> <li><i>a. Has sufficient time has been allocated to each topic?</i></li> <li><i>b. Have any key concepts that should be ‘unpacked’ been omitted?</i></li> <li><i>c. Has any consideration been omitted?</i></li> </ol> <p><i>The Facilitator will submit a revised draft multi-year plan, incorporating the feedback on the initial multi-year plan circulated for consultation during the intersessional period leading up to CSP6, to CSP6 for consideration and possible adoption/endorsement.</i></p>
1 <sup>st</sup> CSP7 Preparatory Meeting, (date TBC)	
<b>10.00-13.00</b>	<p><b>Topic 1: Measures to regulate the transit and trans-shipment of arms <i>by land</i></b></p> <p><i>This discussion will explore options and common practice for regulating the transit and trans-shipment of arms by land. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li><i>- How do States regulate the transit and trans-shipment of arms <u>by road</u> in practice?</i></li> <li><i>- How do States regulate the transit and trans-shipment of arms <u>by rail</u> in practice?</i> <ul style="list-style-type: none"> <li><i>• What form do regulatory measures take at the national level?</i></li> <li><i>• Which Government departments and agencies are involved in implementing the regulatory measures?</i></li> </ul> </li> <li><i>- What are the international and regional instruments governing transit and transportation of goods <u>by road</u>?</i></li> <li><i>- What do these instruments say about the transit and trans-shipment of arms <u>by road</u>?</i></li> <li><i>- What are the international and regional instruments governing transit and transportation of goods <u>by rail</u>?</i></li> </ul>

	<ul style="list-style-type: none"> <li>- <i>What do these instruments say about the transit and trans-shipment of arms <u>by rail</u>?</i></li> <li>- <i>What are the implications of free trade/free movement of goods zones for the transit and trans-shipment of arms?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentations on international regulations governing the transit and trans-shipment of goods, including arms, by road and by rail.</i></p>
<b>2nd CSP7 Preparatory Meeting, (date TBC)</b>	
<b>1 hour</b>	<p><b>Topic 2: Measures to regulate the transit and trans-shipment of arms <i>by air</i></b></p> <p><i>This discussion will explore options and common practice for regulating the transit and trans-shipment of arms by air. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li>- <i>How do States regulate the transit and trans-shipment of arms <u>by air</u> in practice?</i> <ul style="list-style-type: none"> <li>• <i>What form do regulatory measures take at the national level?</i></li> <li>• <i>Which Government departments and agencies are involved in implementing the regulatory measures?</i></li> </ul> </li> <li>- <i>What are the international and regional instruments governing transit and transportation of goods <u>by air</u>?</i></li> <li>- <i>What do these instruments say about the transit and trans-shipment of arms <u>by air</u>?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentations on international regulations governing the transit and trans-shipment of goods, including arms, by air.</i></p>
<b>2 hours</b>	<p><b>Topic 3: Measures to regulate the transit and trans-shipment of arms <i>by sea</i></b></p> <p><i>This discussion will explore options and common practice for regulating the transit and trans-shipment of arms by sea. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li>- <i>How do States regulate the transit and trans-shipment of arms <u>by sea</u> in practice?</i> <ul style="list-style-type: none"> <li>• <i>What form do regulatory measures take at the national level?</i></li> <li>• <i>Which Government departments and agencies are involved in implementing the regulatory measures?</i></li> </ul> </li> <li>- <i>What are the international and regional instruments governing transit and transportation of goods <u>by sea</u>?</i></li> <li>- <i>What do these instruments say about the transit and trans-shipment of arms <u>by sea</u>?</i></li> </ul>

	<p><i>In addition, there will be expert kick-off presentations on international [and regional] regulations governing the transit and trans-shipment of goods, including arms, by sea.</i></p>
<p><b>1st CSP8 Preparatory Meeting, (date TBC)</b></p>	
<p><b>1 hour</b></p>	<p><b>Topic 4: Unpacking the phrase ‘under its jurisdiction’</b></p> <p><i>This discussion will explore the term ‘under its jurisdiction’ in Article 9 of the Treaty. The discussion will explore the following aspects:</i></p> <ul style="list-style-type: none"> <li>- <i>How can the term “under its jurisdiction” be best described or defined?</i></li> <li>- <i>What are the general obligations and the role of flag States?</i></li> <li>- <i>What are the options by States for regulating transit or trans-shipment “through its territory in accordance with relevant international law”?</i></li> </ul> <p><i>In addition, there will be expert kick-off presentations on the international obligations of flag states.</i></p>
<p><b>2 hours</b></p>	<p><b>Topic 5: Relationship between Article 9 and other Articles</b></p> <p><i>This discussion will explore other areas of the Treaty where transit and trans-shipment States may have obligations or responsibilities, including:</i></p> <ul style="list-style-type: none"> <li>- <i>What is the relationship between Article 6 (Prohibitions) and Article 9 (Transit and Trans-shipment), since the term ‘transfer’ includes ‘transit’ and ‘trans-shipment’ under Article 2(2)?</i></li> <li>- <i>What is the relationship between Article 7(6) (Export and Export Assessment) and Article 9, since Article 7(6) contemplates that transit or trans-shipment States Parties may request information pertaining to export authorizations?</i></li> <li>- <i>What is the relationship between Article 11(1) (Diversion) and Article 9, since Article 11(1) obliges each State Party ‘involved in the transfer’ of conventional arms to take measures to prevent their diversion and ‘transfer’ is described or defined under Article 2(2) to include transit and trans-shipment?</i></li> <li>- <i>What is the relationship between Article 11(3) (Diversion) and Article 9, since Article 11(3) obliges transit and trans-shipment States Parties to cooperate and exchange information, pursuant to their national laws, to mitigate the risk of diversion?</i></li> <li>- <i>What is the relationship between Article 12(2) (Record keeping) and Article 9, since Article 12(2) encourages States Parties to maintain records of conventional arms that are authorized to transit or trans-ship territory under its jurisdiction?</i></li> </ul>

**2<sup>nd</sup> CSP8 Preparatory Meeting, (date TBC)**

	<i>[The topic(s) for discussion is to be determined according to previous discussions and may include continuation of themes addressed in previous sessions that require more time, or new themes or elements of Article 9 that have arisen during previous sessions, but have not yet been addressed.]</i>

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ANNEX D

REVISED MULTI-YEAR WORK PLAN FOR THE WGETI SUB-WORKING GROUP ON ARTICLE 11 (DIVERSION)

1 <sup>st</sup> CSP5 Preparatory Meeting, 30 January 2019		
	<b>10.00-11.00</b>	<p><b>Draft Multi-year Work Plan</b></p> <p>Introduction by facilitator</p> <p>Open discussion</p> <p><i>In reviewing the draft proposed multi-year plan, participants are invited to consider, amongst others, the following questions:</i></p> <ol style="list-style-type: none"> <li>a. <i>Has sufficient time has been allocated to each topic?</i></li> <li>b. <i>Have any topics been omitted that should be included?</i></li> <li>c. <i>Has any consideration been omitted?</i></li> </ol>
<b>Transfer chain stage 1: Before the transfer</b>	<b>11.00-13.00</b>	<p><b>1. Import documentation<sup>9</sup></b></p> <p><i>This discussion will explore the types of written documentation submitted as part of an application for an export licence from the exporting State (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances). It will consider:</i></p> <ul style="list-style-type: none"> <li>- <i>What types of written documents exist?</i></li> <li>- <i>How are such documents prepared? Which ministries and agencies are involved?</i></li> <li>- <i>What is the role and/or responsibilities of the importing State regarding such documents?</i></li> <li>- <i>What is the role and/or responsibilities of the transit/transshipment State(s)?</i></li> <li>- <i>What is the role and/or responsibilities of the brokering State(s)?</i></li> <li>- <i>What is the role of the exporting State (i.e. verification and authentication as part of diversion riskassessment)?</i></li> <li>- <i>In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i></li> </ul> <p><i>It will also examine the role of <b>information exchange</b> in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary.</i></p>

<sup>9</sup> Paragraphs 3, 6 and 7 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

Transfer chain stage 1: Before the transfer	3 hours	<p><b>2. Import documentation<sup>9</sup> (continued)</b></p> <p><i>This discussion will continue to explore the types of written documentation submitted as part of an application for an export licence from the exporting State (such as contracts or agreements, international import certificates, transit approvals, end-use/r certificates (EUCs), and various other assurances). The Facilitator will circulate a background paper in advance of the 2<sup>nd</sup> series of CSP5 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> <li>- <i>What types of written documents exist?</i></li> <li>- <i>How are such documents prepared? Which ministries and agencies are involved?</i></li> <li>- <i>What is the role and/or responsibilities of the importing State regarding such documents?</i></li> <li>- <i>What is the role and/or responsibilities of the transit/transshipment State(s)?</i></li> <li>- <i>What is the role and/or responsibilities of the brokering State(s)?</i></li> <li>- <i>What is the role of the exporting State (i.e. verification and authentication as part of diversion risk assessment)?</i></li> <li>- <i>In practice, what are the common elements of such documents? What assurances are provided? What is the minimum that should be required?</i></li> <li>- <i>What sanctions do exporting States impose for non-compliance with end-use/r assurances and undertakings?</i></li> </ul> <p><i>It will also examine the role of <b>information exchange</b> in verifying and authenticating import documentation and identify the types of information exchange that are relevant and necessary.</i></p> <ul style="list-style-type: none"> <li>- <i>How do exporting States verify and authenticate import documents as a part of a broader risk assessment framework?</i></li> <li>- <i>What mechanisms are used?</i></li> <li>- <i>Which agencies are involved?</i></li> <li>- <i>How long does it take?</i></li> <li>- <i>What steps are taken if the documentation is found to be fraudulent?</i></li> </ul>
	1 hour	<p><b>3. The role of the private sector in import documentation</b></p> <p><i>This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.</i></p> <ul style="list-style-type: none"> <li>- <i>What is the role of industry in helping State agencies verify and authenticate import documentation?</i></li> <li>- <i>What could be done to encourage industry to develop internal control compliance programmes?</i></li> </ul>

<sup>9</sup> Paragraphs 3, 6 and 7 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

Transfer chain stage 1: Before the transfer	3 hours	<p><b>1. Assessing the risk of diversion<sup>10</sup></b></p> <p><i>This discussion will explore the practicalities (including resource requirements and challenges) associated with assessing the risk of diversion of an export and the possible establishment of mitigation measures. The Facilitator will circulate a background paper in advance of the 1<sup>st</sup> series of CSP6 meetings to facilitate discussion, including the following elements:</i></p> <ol style="list-style-type: none"> <li>a. <i>How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));</i></li> <li>b. <i>How to identify certain diversion risk indicators;</i></li> <li>c. <i>How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2));</i></li> <li>d. <i>How to examine the risks arising from the proposed shipment arrangements;</i></li> <li>e. <i>How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i></li> <li>f. <i>How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end- user.</i></li> <li>g. <i>What are the options for mitigating detected risk(s)?</i></li> </ol> <p><i>It will also examine the role of information and <b>information exchange</b> in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.</i></p>
	1 hour	<p><b>5. The role of the private sector in mitigating diversion risk</b></p> <p><i>This discussion will explore the role of the private sector, including arms manufacturers/industry and civil society, in mitigating diversion risk before the physical transfer takes place. It will also examine the role of internal export control compliance programmes.</i></p>

<sup>10</sup> Paragraph 5 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

2nd CSP6 Preparatory Meeting, (cancelled)		
	3 hours	<i>Meeting cancelled due to the COVID-19 crisis.</i>
1 <sup>st</sup> CSP7 Preparatory Meeting, (date TBC)		
Transfer chain stage 1: Before the transfer	3 hours	<p><b>6. Assessing the risk of diversion<sup>11</sup> (continued)</b></p> <p><i>This discussion will continue to explore the practicalities (including resource requirements and challenges) associated with assessing the risk of diversion of an export and the possible establishment of mitigation measures, including the following elements:</i></p> <ul style="list-style-type: none"> <li>- <i>How to undertake consistent and objective transfer risk assessments that take into account the risk of diversion (Articles 7(1) and 11(2));</i></li> <li>- <i>How to identify certain diversion risk indicators;</i></li> <li>- <i>How to establish the legitimacy and credibility of all parties involved in the transfer, such as the exporter, brokers, shipping agents, freight forwarders/intermediate consignees and stated end-use/r (Article 11(2));</i></li> <li>- <i>How to examine the risks arising from the proposed shipment arrangements;</i></li> <li>- <i>How to assess the reliability of controls in the importing country and the transit country (if applicable); and</i></li> <li>- <i>How to examine the risk that a conventional arms transfer would increase the risks of diversion of the existing holdings of the end-user.</i></li> <li>- <i>What are the options for mitigating detected risk(s)?</i></li> </ul> <p><i>It will also examine the role of information and <b>information exchange</b> in conducting a risk assessment and identify the types of information and mechanisms of information exchange that are relevant and necessary.</i></p>
	1 hour	<p><b>7. Discussion on paper outlining elements of a process for assessing the risk of diversion</b></p> <p><i>The Facilitator will circulate a paper in advance of the 1<sup>st</sup> series of CSP7 meetings outlining the elements of a process for assessing the risk of diversion, based on the discussion that took place during the 1<sup>st</sup> meeting, for consideration and possible adoption at CSP7.</i></p>

<sup>11</sup> Paragraph 5 of the Sub-working group paper : [Possible measures to prevent and address diversion](#) (available in other languages [here](#)).

Transfer chain stage 2: During the transfer	3 hours	<p><b>1. The role of transit and transshipment States in preventing diversion</b></p> <p><i>This discussion will explore the measures that can and are being taken by transit and transshipment States to mitigate the risk of diversion during a transfer. The Facilitator will circulate a background paper in advance of the 1<sup>st</sup> series of CSP7 meetings to facilitate discussion, including the following elements:</i></p> <ul style="list-style-type: none"> <li>- <i>Issuing delivery notification (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Article 11(3));</i></li> <li>- <i>Conducting routine risk assessment or due diligence checks on conventional arms shipments, in cooperation with local, regional or international law enforcement organizations and other regulatory agencies, prior to approval of transfers; and</i></li> <li>- <i>Monitoring and protecting conventional arms shipments, in cooperation with customs service, law enforcement and other industry parties involved (e.g. freight forwarders/intermediate consignees, transporters etc).</i></li> </ul> <p><i>It will also examine the practical and legal challenges faced by transit and transshipment States in preventing diversion during transit (by sea, air or land – road and rail), as well as the role of cooperation and <b>information exchange</b> among States involved in a transfer during the transfer phase and identify the types of information exchange that are relevant and necessary.</i></p> <ul style="list-style-type: none"> <li>- <i>What mechanisms are used in ensuring cooperation and information exchange to mitigate diversion?</i></li> <li>- <i>Which ministries or agencies are involved in the information exchange process?</i></li> <li>- <i>Are there national legal restrictions that can impact the information exchange process?</i></li> </ul>
	1 hour	<p><b>2. The role of the private sector in mitigating diversion risk</b></p> <p><i>This discussion will explore the role of the private sector, in particular transporters (road, rail, air and sea), freight forwarders/intermediate consignees, etc mitigating diversion risk during transfer.</i></p>

Transfer chain stage 3: At or after importation / Post-delivery	2 hours	<p><b>1. The role of importing States in preventing diversion</b></p> <p><i>This discussion will explore the measures that can and are being taken by importing States to mitigate the risk of diversion post-delivery, including</i></p> <ul style="list-style-type: none"> <li>- <i>Issuing delivery notification by the importing State (through delivery receipts signed by the importations customs service, delivery verification certificate, etc.) (Articles 8(1) and 11(3));</i></li> <li>- <i>Registering and maintaining records of conventional arms entering their national territory, as well as the secure transfer of these to the authorised end-user (Article 12 (2)); and</i></li> <li>- <i>Ensuring robust stockpile management procedures (including routine security inspections and audits of the conventional arms stockpiles of all end users). <b>Note:</b> it is anticipated that the topic of post-delivery storage and stockpile management would be discussed as part of a future multi-year work plan that will address Transfer chain 4.</i></li> <li>- <i>Effective legislation for investigating and/or punishing diversion-related offences.</i></li> </ul>
	2 hours	<p><b>2. Post-delivery cooperation</b></p> <p><i>This discussion will explore the possibility of exporting States conducting post-delivery checks in cooperation with competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without prior notification to the country of origin. It will examine the political and resource implications of such checks.</i></p> <ul style="list-style-type: none"> <li>- <i>What are some challenges/concerns regarding post-delivery cooperation?</i></li> </ul>

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